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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ALASKA**
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12 **STEVEN D. MORRISON,**

13 **Plaintiff,**

14 **vs.**

15 **UNITED STATES OF AMERICA**
16 **and CHENEGA INTEGRATED**
17 **SYSTEMS, LLC,**

18 **Defendants.**
19

4:15-CV-00014 JWS

ORDER AND OPINION

[Re: Motion at docket 47]

20 **I. MOTION PRESENTED**

21 At docket 47, Defendant Chenega Integrated Systems, LLC (CIS) filed a motion
22 for summary judgment. Plaintiff Steven Morrison (Plaintiff) filed an opposition at
23 docket 51. CIS replied at docket 53. Oral argument was not requested and would not
24 assist the court.

25 **II. BACKGROUND**

26 In January of 2012, Plaintiff was working for Pacific Alaska Freightways, Inc., as
27 a commercial delivery driver and was assigned to make a delivery to Iceman Outfitters,
28 a store within the confines of Eielson Air Force Base (the "Base"). Security services for
the Base, including inspection of commercial delivery vehicles, were provided by CIS

1 pursuant to CIS's subcontract with TW & Company, Inc. (the "Subcontract"). TW in turn
2 had a Security Forces Support Services Contract with the United States Air Force for
3 security services at the Base.

4 After arriving at the Base for the delivery, Plaintiff exited his truck at the
5 designated inspection area in order for the security guards to perform their mandatory
6 inspection and paperwork. He waited in the designated area during the guards'
7 inspection. While returning to his truck after the inspection, he slipped and fell on ice,
8 injuring his right knee.

9 It is undisputed that drivers such as Plaintiff are required to exit their trucks for
10 inspection before being allowed to enter the Base. It is undisputed that Plaintiff was
11 parked where the CIS security guards had instructed him to park and was walking
12 where he was expected and instructed to walk. It is undisputed that the area where he
13 was walking was icy.

14 Plaintiff subsequently brought this lawsuit in federal court, alleging negligence
15 and negligence per se against the United States and CIS. As to the negligence claim,
16 Plaintiff alleges that the United States and/or CIS "negligently designed, constructed
17 and/or maintained the Eielson front gate walk areas."¹ As to the negligence per se
18 claim, Plaintiff alleges that the United States and/or CIS "violated rules, regulations,
19 codes and/or statutes designed to protect persons such as [Plaintiff] from the type of
20 harm he suffered"² CIS now asks the court to grant it summary judgment, arguing
21 that it does not owe Plaintiff any duty to provide safe, ice-free walkways. It argues that
22 it did not design or construct the front gate and inspection area on Base and that the
23 United States is responsible for snow and ice removal on walkways, entryways, and
24 roadways throughout the base, including the front gate and inspection area. Plaintiff
25 opposes the motion, arguing that CIS owes Plaintiff a duty to maintain the walkways

26
27 ¹Doc. 17 at p. 5 (Complaint ¶ 28).

28 ²Doc. 17 at p. 5 (Complaint ¶ 29).

1 and ground surfaces in the inspection area in a reasonably safe condition and to warn
2 him of any dangerous walkway or surface conditions based on its status as a tenant
3 and/or “occupier of land,” as well as under the Subcontract.³

4 **III. STANDARD OF REVIEW**

5 Summary judgment is appropriate where “there is no genuine dispute as to any
6 material fact and the movant is entitled to judgment as a matter of law.”⁴ The
7 materiality requirement ensures that “only disputes over facts that might affect the
8 outcome of the suit under the governing law will properly preclude the entry of summary
9 judgment.”⁵ Ultimately, “summary judgment will not lie if the . . . evidence is such that a
10 reasonable jury could return a verdict for the nonmoving party.”⁶ However, summary
11 judgment is mandated “against a party who fails to make a showing sufficient to
12 establish the existence of an element essential to that party’s case, and on which that
13 party will bear the burden of proof at trial.”⁷

14 The moving party has the burden of showing that there is no genuine dispute as
15 to any material fact.⁸ Where the nonmoving party will bear the burden of proof at trial
16 on a dispositive issue, the moving party need not present evidence to show that
17 summary judgment is warranted; it need only point out the lack of any genuine dispute
18 as to material fact.⁹ Once the moving party has met this burden, the nonmoving party
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20 ³Plaintiff does not dispute CIS’s argument that CIS did not have any part in the design or
21 construction of the front gate and inspection area, and therefore the negligence claim against
22 CIS is limited to the maintenance issue.

23 ⁴Fed. R. Civ. P. 56(a).

24 ⁵*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

25 ⁶*Id.*

26 ⁷*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

27 ⁸*Id.* at 323.

28 ⁹*Id.* at 323-25.

1 must set forth evidence of specific facts showing the existence of a genuine issue for
2 trial.¹⁰ All evidence presented by the non-movant must be believed for purposes of
3 summary judgment, and all justifiable inferences must be drawn in favor of the
4 non-movant.¹¹ However, the non-moving party may not rest upon mere allegations or
5 denials, but must show that there is sufficient evidence supporting the claimed factual
6 dispute to require a fact-finder to resolve the parties' differing versions of the truth at
7 trial.¹²

8 **IV. DISCUSSION**

9 **Negligence**

10 Under Alaska law, the existence of a defendant's duty in a negligence case is a
11 question of law which can be decided at the summary judgment stage. Summary
12 judgment is appropriate when "no evidence tends to suggest that any duty has arisen
13 between a defendant and plaintiff."¹³ To determine whether a defendant owes a plaintiff
14 a duty of reasonable care, the court first considers "whether a duty is imposed by
15 statute, regulation, contract, undertaking, the parties' preexisting relationship, or existing
16 case law."¹⁴ If these sources do not resolve the issue, the court applies a set of public
17 policy factors to determine whether an actionable duty exists.¹⁵ The related, and
18 sometimes intertwined, question regarding the scope of that duty is also an issue that
19 can be properly decided at the summary judgment phase if the duty owed is "clearly
20 and vastly narrower in scope than the one that the other party asserts in opposing
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22 ¹⁰*Anderson*, 477 U.S. at 248-49.

23 ¹¹*Id.* at 255.

24 ¹²*Id.* at 248-49.

25 ¹³*Arctic Tug & Barge, Inc. v. Raleigh, Schwarz & Powell*, 956 P.2d 1199, 1205 (Alaska
26 1998); *see also Hurn v. Greenway*, 293 P.3d 480, 483 (Alaska 2013).

27 ¹⁴*Geotek Alaska, Inc. v. Jacobs Eng'g Grp., Inc.*, 354 P.3d 368, 376 (Alaska 2015).

28 ¹⁵*Id.*

1 summary judgement.”¹⁶ However, summary judgment is generally disfavored in
2 situations where no party disputes the existence of a duty, but the precise scope of that
3 duty is in question. “[I]t is much harder to show that there are no genuinely disputed
4 material facts when the existence of a duty is clear and the question is of its precise
5 scope, or whether given conduct fulfilled it.”¹⁷

6 CIS argues that summary judgment is appropriate here because the only
7 reasonable inference to be taken from the undisputed facts is that CIS did not owe
8 Plaintiff a duty of care with respect to his use of the walkways and surfaces in the
9 inspection area. CIS argues that the United States was the landowner and had
10 procedures for maintaining roadways and walkways and assigned those responsibilities
11 to military personnel, not CIS. For instance, the evidence shows that removal of snow
12 and ice from walkways and entryways of buildings on Base was assigned to each
13 building’s Facility Manager. The Facility Manager for the front gate and inspection area
14 in January of 2012 was S.Sgt. Freeman, an active duty military member in the Security
15 Forces Squadron. The responsibility for clearing snow and ice from any general
16 roadway on base was assigned to the Civil Engineering Squadron. The Civil
17 Engineering Commander in charge of road maintenance was Lt. Col. Michael Sheredy,
18 another military member. Based on this evidence, CIS argues that it could not have
19 owed Plaintiff any duty of care with regard to the condition of the walkways in the
20 inspection area.

21 Plaintiff argues that, regardless of the Government’s involvement in clearing
22 snow and ice on the Base, Alaska case law still makes CIS liable here. He argues that
23 courts have held tenants responsible for maintaining their leased premises in a
24 reasonably safe condition, and therefore CIS was responsible for maintenance in the
25 inspection area. Plaintiff does not provide any evidence to show that CIS was a tenant.

27 ¹⁶*Arctic Tug*, 956 P.2d at 1203.

28 ¹⁷*Id.* at 1204.

1 There is no lease agreement. Indeed, the fact that there was a Facility Manager
2 responsible for maintenance of the inspection area shows that CIS did not occupy that
3 portion of the Base to the exclusion of Government employees.

4 Plaintiff argues that CIS owes him a duty of care with respect to the condition of
5 the surfaces in the inspection area because, under the facts here, CIS is an “occupier
6 of land,” even if it is not legally considered a tenant. Plaintiff relies on an Alaska
7 Supreme Court case, *Moloso v. State*.¹⁸ The court in *Moloso* quoted with approval a
8 California case which stated that an “occupier of land” is liable when he is aware of a
9 concealed condition that poses an unreasonable risk of harm and fails to warn others
10 about or repair the condition.¹⁹ In *Moloso*, however, the defendant was a landowner in
11 possession of the property, and the court was discussing landowner liability. It did not
12 discuss who constitutes an occupier of land, nor did it consider whether a defendant
13 who is not a landowner, tenant, or exclusive user of the land but, rather, a subcontractor
14 performing services for the landowner at certain locations on the property can
15 nonetheless be considered an occupier. Thus, *Moloso* does not clearly establish the
16 existence of a duty here.

17 Plaintiff does not cite any other case that is sufficiently on point. However,
18 Alaska courts have adopted Restatement (Second) Torts § 343, which imposes liability
19 on a “possessor of land” for certain concealed conditions. Section 343 reads as
20 follows:

21 A possessor of land is subject to liability for physical harm caused to his
22 invitees by a condition on the land if, but only if, he (a) knows or by the
23 exercise of reasonable care would discover the condition, and should
24 realize that it involves an unreasonable risk of harm to such invitees, and
(b) should expect that they will not discover or realize the danger, or will fail
to protect themselves against it, and (c) fails to exercise reasonable care to
protect them against the danger.²⁰

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26 ¹⁸644 P.2d 205 (Alaska 1982).

27 ¹⁹*Id.* at 219 (quoting *Rowland v. Christian*, 443 P.2d 561, 568 (Cal. 1968)).

28 ²⁰Restatement (Second) of Torts § 343 (1965).

1 A possessor of land is defined as “a person who is in occupation of the land with intent
2 to control it.”²¹ Here, the evidence provided shows that the Government maintained at
3 least some control over the inspection area. There was a Facility Manager assigned to
4 it, and that person was “responsible for inspection of facilities and repair or reporting of
5 discrepancies beyond the capability to repair.”²² Plaintiff does not provide any evidence
6 regarding CIS’s intent to control the property or its actual extent of control.

7 Plaintiff argues alternatively that the subcontract delegated the Government’s
8 duties as a landowner to CIS. The responsibility to remove snow and ice from the
9 inspection area or to generally maintain that area in a reasonably safe condition was
10 not explicitly delegated to CIS under the Subcontract. However, the Subcontract
11 nonetheless requires CIS to use some level of care in performing security services.
12 There is a provision in the Performance Work Statement, which is attached to the
13 Subcontract, that required CIS to conduct inspections “in a safe manner while
14 maintaining control of all personnel and vehicles during inspection.”²³ This provision
15 establishes a general duty of care on CIS in relation to its inspection activities. Another
16 provision, Article 3 of the Subcontract, which neither party discusses, also references
17 CIS’s duty to the public. It states that CIS “will perform its services using that degree of
18 skill and care ordinarily exercised under similar conditions by reputable members of
19 [CIS’s] profession practicing in the same or similar locality at the time of performance”
20 and that CIS “shall exercise reasonable care to ensure the safety of the public and
21 other workers with respect to those activities and portions of the work site over which it
22 has control.”²⁴ This provision, when read in conjunction with the “safe manner”

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25 ²¹Restatement (Second) of Torts § 328E (1965).

26 ²²Doc. 47-6 at p. 1.

27 ²³Doc. 47-1 at p. 8.

28 ²⁴Doc. 47-1 at p. 5.

1 provision in the Performance Work Statement, establishes at least some duty of care
2 here.

3 While the court finds that CIS had a contractual duty of care in relation to
4 Plaintiff's safety, summary judgment in favor of CIS may still be appropriate if that duty
5 is "clearly and vastly narrower in scope" than Plaintiff contends.²⁵ CIS argues that the
6 scope of any duty of care set forth in the contract does not extend to the removal of ice
7 or warning about slippery conditions. It points to evidence to show that such a provision
8 is only "boilerplate language that is used in each and every contract made by the U.S.
9 Air Force in contracting for armed guard services."²⁶ The fact that the "safe manner"
10 language is standard in contracts for security at all U.S. Air Force locations, even those
11 without snow and ice, does not demonstrate that the duty is somehow too narrow to
12 encompass the situation here. What constitutes a "safe manner" can certainly vary
13 depending on the underlying circumstances and location of the services. CIS goes on
14 to argue that the language merely "refers to CIS's duty to ensure that CIS conducts the
15 armed security guard duties in a manner that is conscious to threats to the security of
16 [the Base]."²⁷ CIS, however, does not provide any evidence to support its argument
17 that its duty is limited as such, and it does not discuss the duty in relation to Article 3 of
18 the Subcontract, which requires CIS to use a level of care ordinarily exercised by
19 security guards in such a situation.

20 There are issues of fact remaining as to the extent of CIS's duty in this situation.
21 Neither party provides specific evidence as to what would be considered standard
22 practice for security operations conducted outdoors. However, the record contains
23 evidence to support a finding that the ice may have been unreasonably slippery in the
24 inspection area because vehicles' warm engines melt snow that then refreezes on top

25 ²⁵*Arctic Tug*, 956 P.2d at 1203.

26 ²⁶Doc. 53 at p. 7.

27 ²⁷*Id.*

1 of the polished concrete area, creating a thin sheet of ice.²⁸ Plaintiff also presents
2 evidence to show that sometimes CIS guards would warn drivers exiting vehicles about
3 slippery conditions in the inspection area²⁹ and that, as part of CIS's duty to provide for
4 the safety of its own workers, CIS would make ice cleats available to security officers
5 under the inspection tent.³⁰ Based on this evidence, a reasonable juror could conclude
6 that CIS's duty to conduct inspections in a safe manner and perform services with the
7 degree of care ordinarily exercised in the profession extended far enough to at least
8 require CIS guards to provide some warning or safety mechanism with respect to the
9 icy condition of the ground to those people exiting vehicles for mandatory inspection.
10 Therefore, summary judgment is not appropriate.

11 **Negligence per se**

12 Under a negligence per se claim, a "[v]iolation of a statute or regulation can
13 'amount[] to negligence as a matter of law . . . when the statute or regulation at issue
14 defines a standard of conduct that a reasonable person is expected to follow under the
15 circumstances presented.'"³¹ Put in other terms, negligence per se exists when there is
16 a "legislative enactment commanding or prohibiting for the safety of others the doing of
17 a specific act and there is a violation of such enactment solely by one whose duty it is to
18 obey it"³² Here, there is no statute, regulation, code, or rule that specifically
19 commands CIS to do any specific act or defines a standard of conduct applicable to
20 CIS. Plaintiff argues that Alaska's civil jury instructions place a duty on CIS as an
21 occupier of land. The court finds this position untenable. As noted above, there is
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23 ²⁸Doc. 51-3 at p. 1; Doc. 51-4 at p. 3.

24 ²⁹Doc. 51-2 at p. 4.

25 ³⁰Doc. 51-2 at p. 3.

26 ³¹*Jones v. Bowie Indus., Inc.*, 282 P.3d 316, 332 (Alaska 2012) (quoting *Pagenkopf v.*
27 *Chatham Elec., Inc.*, 165 P.3d 634, 647 (Alaska 2007)).

28 ³²*Bachner v. Rich*, 554 P.2d 430, 442 (Alaska 1976).

1 nothing in the case law to suggest CIS is in fact an entity controlling the property, and,
2 moreover, the jury instructions do not command CIS to do a specific act for the safety of
3 others and therefore do not create a defined standard of care to apply under a
4 negligence per se theory.³³ Plaintiff also argues that the American Standards of Testing
5 Measures ("ASTM") provide the necessary standards of care for purposes of
6 negligence per se. Plaintiff only provides incomplete excerpts of these standards, and
7 fails to provide any evidence as to what these standards are or how they assign a duty
8 to CIS.³⁴ Also, nothing in the evidence demonstrates that these standards were
9 adopted or codified by any governing body so as to impose on CIS a duty to comply
10 with these specific standards. While ASTM may be relevant with respect to the issue of
11 what constitutes the applicable standard of care and a breach of that standard, they are
12 insufficient to support a finding of negligence per se.

13 **V. CONCLUSION**

14 Based on the preceding discussion, CIS's motion to dismiss at docket 47 is
15 DENIED with respect to Plaintiff's negligence claim and GRANTED with respect to
16 Plaintiff's negligence per se claim.

17 DATED this 20th day of June 2017.

18
19 /s/ JOHN W. SEDWICK
20 SENIOR JUDGE, UNITED STATES DISTRICT COURT
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26 ³³See *Dahle v. Atl. Richfield Co.*, 725 P.2d 1069 (Alaska 1986) ("In order for a provision
27 to be the basis of a negligence per se instruction, it must set forth a specific standard of
conduct beyond that defined in a common law duty.").

28 ³⁴Doc. 51-4 at p. 2.